SEP 14 2000

INTERNAL REVENUE SERVICE **200126032**

NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

UIL 501.03-26; 6621.01-00

District Director

T:EO:B3

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification Number:

Years Involved:

Conference:

Legend:

T =
X =
Z =

ISSUES

1. Is the entity known as X a "corporation" as that term is construed within Internal Revenue Code section 6621 for purposes of determining the applicable interest rate on overpayments for interest computations performed for periods after December 31, 1994 (the "corporate overpayment interest rates")?

2. In the case of an entity subject to the unrelated business income tax imposed under section 511(a) of the Code, do the corporate overpayment rates apply to employment tax refunds when the employment services to which the refunds relate are not performed within the scope of any unrelated trade or business?

3. What relevancy does the fact that X files Form 990-T have, or not have, as to the applicability of the corporate overpayment interest rates on refunds of employment or other non-income type taxes?

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4. If as result of this technical advice request, X is determined to be subject to the corporate overpayment interest rates, what remedies (appeal rights) are available to X if it does not agree with this conclusion?

FACTS.

X was created by the Legislative Assembly of the Territory of Z pursuant to the Z Territorial Laws, Chapter III. X refers to this legislation as its Charter. Chapter III states that it is "an act to incorporate X." The Title to Chapter III states that "there shall be established in this Territory an Institution, under the name and style of X. "Chapter III, section 4 provides that "the government of this X shall be vested in a Board of twelve Regents, who shall be elected by the Legislature. Section 7 provides that "the Regents of the X shall constitute a body corporate, with the name and style of the 'Regents of the X' with the right as such, of suing and being sued, of contracting, and using a common seal".

The constitution of the State of Z perpetuated X as follows:

> All rights, immunities, franchises and endowments heretofore granted or conferred are hereby perpetuated unto the said X."

Article 13, Section 3 of the current version of the Z Constitution retains the perpetuation of X.

X has been and continues to be financially supported by the State Z During its fiscal years from 1991 through 1998, for example, X received substantial annual appropriations. In any given year, these appropriations may account for 28-32 percent of the total fiscal year revenues relied upon by X to fund its operations.

In a ruling by a Deputy Commissioner of Internal Revenue dated June 25, 1941, X was held to be an instrumentality of Z. As such, X was further held to be exempt from federal income tax and not subject to filing income tax returns. X applied for federal tax exemption under section 501(c)(3) of the Code in 1961. The stated reason for seeking tax exempt status was that the X's employees desired to avail themselves of the tax treatment provided under section 403(b) of the Code. By virtue of a letter from the Service dated August 21, 1961, X was recognized as exempt under section 501(c)(3) as an instrumentality of the State of Z. In a letter dated December 24, 1970, X was notified that it was classified by the Service as an organization that is not a private foundation as defined in section 509(a) but one that is described in section 509(a)(1) and section 170(b)(1)(A)(ii).

The filing requirements for X as listed on the IRS Master File show that X is not required to file Form 990. X is required to file, however, Form 990-T. On the face of Form 990-T, X has identified itself as a corporation.

X timely filed employment tax claims for overpaid taxes for the calendar quarters ending December 31, 1990 through June 30, 1998. Each quarter's refund exceeded $10,000. In February 1999, the IRS subsequently allowed these claims in full. Each calendar quarter's FICA tax refund that was paid to X was accompanied by an IRS

computed interest payment. The IRS has identified X as a corporation, subject to the corporate overpayment interest rates for each of the calendar quarters involved in the claim. The IRS interest calculation, therefore, employed the reduced interest rate applicable to overpayments of tax by corporations that exceed $10,000 for any taxable period. This reduced interest rate was applied to X's claims for the interest computations performed for the interest periods beginning after December 31, 1994.

X has performed its own interest computations on its refunds and has determined that the IRS computation is deficient by approximately $1.9 million in total. X used the full interest rate on tax overpayments as if X was not subject to the lower overpayment rates applicable to corporations.

The FICA tax refund claims did not arise with respect to the activities of the employees of X that are associated with X's unrelated trade or business filed on Form 990-T. The FICA tax refund claims are related solely and entirely to X's exempt function activities.

As stated earlier, under the X's charter, a Board of Regents, all of the members of which are elected by the legislature, governs X. The Charter also provides that the regents shall hold their offices for six years and shall be divided into three classes, each class being elected by the legislature at two-year intervals.

This constitutionally mandated method of election of the X regents is currently effective. On Thursday, February 18, 1999, a joint session of the House of Representatives and Senate conducted a biennial election for one of the three classes of regents.

X's Charter does not expressly give the legislature the power to remove a regent, either with or without cause. No information was submitted of any instance in which the legislature has attempted to remove a regent before the end of his or her term. A regent's term is only for six years, however, and the legislature always has the right not to reelect a regent with whose service it is dissatisfied.

Both the executive and legislative branches of the state government exercise financial controls over X. Section 16 of the Charter requires X to report annually to the legislature on financial and other matters, and section 9 requires X to submit to the legislature for approval the salaries paid to X faculty and other officers. State law requires X to consult with the chairs of the Senate Finance Committee and the House Ways and Means Committee before purchasing land or purchasing or erecting buildings, and State law also requires X to make available to the Commissioner of Finance all books, accounts, documents and property that the Commissioner desires to inspect. State law requires the legislative auditor to perform an annual audit of X on the same basis as other state agencies.

The Commissioner of Finance is the head of the state Department of Finance. He is defined as the State's controller and chief accounting and financial officer.

Pursuant to State law, the Governor appoints the Commissioner of Finance. The term of the Commissioner of Finance ends at the same time as the term of the

Governor. After the Governor appoints the Commissioner of Finance, he or she must submit the name of the nominee to the State Senate for confirmation.

State law requires X to pay salaries to its nonacademic employees that are comparable to the salaries paid to state employees in the classified civil service. The employees of X are employees of X itself, not of the State of Z. However, in certain respects, employees of X are treated as or similarly to state employees and are accorded the same or similar benefits as those accorded to state employees.

For purposes of determining collective bargaining units and unionization, X is subject to the State's Public Employment Labor Relations Act. This statute defines the collective bargaining units for employees of the State of Z and for employees of X. X and the State of Z are the only entities in the State for which the bargaining units are defined by statute. Under the statute, each of the State of Z and the Board of Regents of X is defined as a "public employer" and their employees are defined as "public employees."

The statute defines 17 bargaining units for state employees and 13 bargaining units for X employees. No other bargaining units are permitted with respect to either state or X employees. There is no overlap between these bargaining units. That is, no X employees are members of the bargaining units which include state employees. Every employee of X (including faculty, but excluding managerial and confidential employees) is included in one of these bargaining units. Therefore, with respect to most of its employees, X, like the State of Z, is a "public employer" for collective bargaining purposes and has the same legal obligations as the State of Z with respect to labor relations. Furthermore, the employees of X are "public employees" in this context, and accordingly have the same rights and obligations with respect to labor relations as state employees.

A large number of employees of X belong to the American Federation of State, County and Municipal Employees ("AFSCME"), as do many state employees. AFSCME is a union for public employees with approximately 3,500 local unions and affiliates in 47 states, the District of Columbia and Puerto Rico.

With respect to health care, X employees' bargaining units which are represented by unions bargain with X regarding their health care plans, while the non-unionized units generally receive a health care package prepared by X personnel. The health care plans which currently cover X employees are almost identical in benefits to those which cover state employees.

Pension benefits for employees of X are non-negotiable and not subject to collective bargaining. Generally, staff employees (e.g., janitors, secretaries, lab technicians) of X are required to participate in the Z State Retirement System. The Z State Retirement System covers and provides retirement benefits for "state employees." The definition of "state employee" for purposes of the Z State Retirement System includes these classes of X employees.

So-called "academic" employees of X participate in the Faculty Retirement System, not the State Retirement System. These academic employees include both tenure track and non-tenure track employees. The non-tenure track employees include

administrative personnel. These academic employees number about one-third of X's total employees.

In some additional respects, the State of Z views employees of X as if they were employees of the State. For example, pursuant to an administrative arrangement, an X employee who takes a job working with the State can transfer all of his or her sick leave and vacation time accumulated while employed at X to the state job. Furthermore, the employee will get credit from the State for his or her years of service at X in determining benefit levels. Thus, if the employee had twenty years of service at X, he or she would receive the same benefits in the new state job as a state employee with twenty years of service.

X is subject to certain rules governing the selection, by the State Designer Selection Board, of architects for state building projects. X has acknowledged that the Board of Regents is a "public body" whose meetings are subject to the State's Open Meeting Law. It is considered a part of the "state" for purposes of membership in the Workers Compensation Reinsurance Association. Finally, X may be subject to mandamus proceedings if it refuses to perform any of the duties imposed upon it by law.

Public institutions of higher (post-secondary) education in Z are currently organized into two systems: the X system and the T system. The X system comprises the main campus of X and all of the branch campuses of X. The T system comprises all of the other state colleges and universities and the community colleges and technical schools. It is governed by a separate board of trustees.

Both the X and the T system, as public institutions of higher learning, receive substantial support from the State in the form of legislative appropriations. In contrast to X, private colleges and universities located in the State of Z receive no appropriations from the state legislature.

Generally, students who are Z residents who attend X pay tuition at lower rates than non-resident students. There are only two exceptions to the higher tuition rates charged to non-residents. First, X has reciprocity agreements with certain neighboring states, under which residents of those jurisdictions generally pay tuition at X that is the same as that for Z residents. Second, students from certain regional states may qualify for discounted tuition at X through a specific exchange program. Tuition for eligible students under this program is equal to 150% of the Z resident rate.

As noted above, X was created in 1851 by the X Charter. Section 3 of the Charter states:

> The object of X shall be to provide the inhabitants of this Territory with the means of acquiring a thorough knowledge of the various branches of Literature, Science and the Arts.

Furthermore, X is the only institution of higher education in Z whose existence and purpose are mandated by the State Constitution.

X is generally permitted to exercise the power of eminent domain in its own name, pursuant to the same statutory provisions as apply generally to the State and its

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political subdivisions, and without the specific authorization of the legislature or any other state agency.

X is authorized by statute to employ peace officers with authority to exercise throughout the State the same powers of arrest possessed by a sheriff, police officer or peace officer in connection with investigations related to X personnel or property.

The campus police force functions in the same manner as do the local county and municipal police forces. Campus police officers provide proactive patrol, crime prevention, investigative, law enforcement and emergency services. The campus police force investigates all crimes that occur on campus, from misdemeanors through the most serious crimes. Campus police officers have authority to investigate crimes and make arrests. In some circumstances the campus police force will turn to other agencies for special skills, resources or additional staff. For example, the campus police might call upon the county sheriff's office for forensic assistance in the event of a murder or municipal police officers in the case of a large fire on campus.

After the campus police have made an arrest, the prosecution of the offender is referred to the appropriate County Attorney, in the case of felonies, or City Attorney in the case of misdemeanors. The same procedure is followed by city and county police forces.

A significant amount of X police force work is carried on in areas surrounding the X, not actually on campus property. Most of the arrests which X police officers make are of non-students.

Currently the campus police force has 37 sworn officers. It is authorized to have a maximum of 43 sworn officers. The campus police force has specialized training. This is the same specialized training administered by Z for all local police departments. The police officers employed by the campus police have identical training and credentials with the police officers at other local police forces. From time to time the campus police force hires someone from one of the local police forces and vice versa. The only differences between the police work on campus and other police work are the relative youth of the students and the fact that much of the police work is carried on inside X buildings.

While there is currently no formal, written reciprocal assistance agreement between the campus police and B or surrounding counties, such assistance and cooperation occurs regularly, as noted above. In addition, for example, the local city police force holds a meeting every Thursday morning to report crime statistics for the city. A representative from the campus police force attends this meeting each week and reports the campus crime statistics.

The campus police are required by federal law to publish and maintain crime statistics and to disclose the campus security policy. The crime statistics must be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation and the modifications in such definitions as implemented by the Hate Crime Statistics Act.

X is authorized by statute to adopt traffic rules, regulations and ordinances applicable to streets and roads located on X property, to employ law enforcement officers who may exercise on its property the same powers of arrest for violations of these measures as are possessed by other peace officers, and to retain any fines (less the cost of prosecution) collected in the exercise of this policing authority.

X applies it own traffic regulation ordinances on all X properties. The provisions of the traffic regulations apply unless they are in conflict with other ordinances adopted by X. The campus police have the authority to enforce all traffic regulations and to make arrests and investigations in connection with violations of those regulations.

X was held to be a part of the "state" for purposes of the common-law sovereign immunity from tort liability enjoyed by the State prior to the statutory abrogation of that doctrine in 1976.

The forgoing statement of facts is based in part on various statements of fact provided by the X and/or its authorized representative. Many of its statements were accompanied by citations of state statute or case law. Those authorities have been omitted from this recitation of the facts for the sake of brevity.

LAW AND ANALYSIS:

Section 7701(a)(3) defines the term "corporation" for federal income tax purposes.

Section 115 of the Code provides essentially that gross income does not include income derived from the exercise of any essential governmental function and accruing to a State or a political subdivision thereof.

Section 301.7701-1(a) of the Regulations prescribes the classes of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-2(b) of the Regulations defines the term "corporation" for federal income tax purposes in further detail.

Section 301.7701-1(a)(3) of the Regulations provides, in part, that an entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State.

Rev. Rul. 87-2, 1987-2 C.B. 18, holds that income generated by a state lawyer's trust fund managed by the supreme court of the state is not subject to tax under the principle that income earned by a state, a political subdivision of a state, or an integral part of a state or political subdivision of a state is generally not taxable in the absence of specific statutory authorization for taxing such income.

Rev. Rul. 60-384, 1960-2 C.B. 172, explains that a wholly owned state or municipal instrumentality which is a separate entity and which is operated exclusively for purposes described in section 501(c)(3) of the Code may qualify for exemption from federal income tax. However, Rev. Rul. 60-384 goes on to explain that where the particular branch or department under whose jurisdiction the activity in question is being conducted is an integral part of a state or municipal government the provisions of section 501(c)(3) would not be applicable. "For example, where a public school, college, university or hospital is an integral part of a local government, it could not meet the requirements for exemption under section 501(c)(3) of the Code."

In State of Michigan v. United States, 40 F.3d 817 (6th Cir., 1994) the Court held that the Michigan Education Trust (a precursor to a section 529 type organization) which was a quasi public organization was not subject to federal income tax in that it was an integral part of state government.

Section 511(a)(1) of the Code imposes a tax as computed in section 11, on unrelated business taxable income of organizations described in paragraph (2).

Section 511(a)(2)(B) of the Code provides, in part, that the tax imposed under paragraph (1) shall apply in the case of any college or university which is an agency or instrumentality of a government or political subdivision thereof. Such tax shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

A. Legal Standard To Be Applied-

Federal tax law is quite clear that whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law. Reg. Section 301.7701-1(a). By the same token, an entity formed under local law is not always recognized as a separate entity for federal tax purposes if it is an integral part of the state. Reg. Section 301.7701-1(a)(3). As will be seen in the following discussion, these principles cited in the Regulations are fundamental principles of our federal tax law of long standing.

The supplementary information to the Regulations cited above, TD 8697, 1997-1 C.B. 215, emphasizes the point that federal tax law controls the issue of the existence of separate entity, that is, a corporation. Thus, it reinforces the plain language of the regulations on this point. Under the heading of "Summary of the Regulations", the text provides that: "The first step in the classification process is to determine whether there is a separate entity for federal tax purposes." After explaining that certain joint undertakings may constitute separate entities for tax purposes even though they are not considered such for purposes of local law, the "Summary" addresses the opposite situation. It states "however, not all entities formed under local law may nonetheless constitute separate entities for federal tax purposes." The regulations then referred to a limited liability company situation. The Summary then further states that an organization recognized as a separate entity for federal tax purposes is either a trust or a business entity.

The point of emphasis from both the regulations and from the preamble to the regulations is that the entity question is determined by Federal, not state law. Further, Reg. Section 301.7701-1(a)(3) addresses the issues in this case directly by providing that an organization wholly owned by the state is not recognized as a separate entity for federal tax purposes if it is an integral part of the state.

This subject was addressed directly in State of Michigan v. United States, 40 F.3d 817 (6th Cir. 1994). In that case, the Michigan Education Trust, created by an act of the Michigan legislature, was an institution that was "a public body corporate and politic." The education trust was described as a public instrumentality of the state of Michigan. This trust was, apparently, a precursor of the type of trust now sanctioned under section 529 of the Code. The Court opinion went on to state that Service has never interpreted the income tax as applicable to income earned directly by a state, a political subdivision of a state, or "an integral part of a State." As authority, the Court cited

> "Internal Revenue General Counsel Memorandum 14,407, XIV-1 Cum.Bull. 103 (1935), where the Internal Revenue Service concluded almost 60 years ago that a state or political subdivision is not a 'corporation' for purposes of the Internal Revenue Code. See also Rev. Rul. 71-131, 1971-1 Cum.Bull. 28 (superseding GCM 14,407, and reaffirming that income derived from the operation of liquor stores by the State of Montana is not subject to federal income tax); Rev. Rul. 71-132, 1971-1 Cum.Bull. 29 (holding that income derived from the operation of liquor stores by the Oregon Liquor Control Commission is not subject to federal income tax); and Rev. Rul. 87-2 C.B. 1987-1 Cum.Bull. 18 (holding that a Lawyer Trust Account Fund created by a state supreme court as a vehicle for channeling to 'public purposes' income earned on client funds held by attorneys in a fiduciary capacity 'is not subject federal income tax since the Fund is an integral part of the state."

Other authority on this same point includes Rev. Rul. 60-384, 1960-2 C.B. 172. In that ruling the Service discussed the circumstances when a wholly owned state or municipal instrumentality which is a separate entity is organized and operated exclusively for purposes described in section 501(c)(3) and also the circumstances when it may fail to so qualify. The ruling provides one example where an organization would fail to so qualify which is relevant to this case. It states:

> For example, where a public school, college, university or hospital is an integral part of a local government, it could not meet the requirements for exemption under section 501(c)(3) of the Code.

Based on the forgoing, X is an integral part of Z notwithstanding its status as a public corporation and notwithstanding the fact that it files Form 990-T for which it lists its status as a "corporation."

It is also noted that section 115 of the Code is the specific statutory authority dealing with the exclusion for items of income accruing to a State or a political subdivision thereof.

Before discussing specific application of the integral part test, it is our view that logic dictates that it makes no difference for purposes of our discussion whether the

status of a public corporation is "not a corporation", in the language of the holding in the opinion of the State of Michigan v. United States, supra for purposes of the federal income tax or for purposes of the amount of overpayment rate under section 6621(a)(1) of the Code. Having said that, the next line of inquiry is whether X is to be treated as an integral part of the State of Z.

B. Integral Part-

The criteria for determining integral part status on part of a lawyer trust account in Rev. Rul 87-2 included the following factors:

1. The members of the fund are directly or indirectly appointed or approved by the supreme court of the state.
2. The supreme court may remove any member of the fund without cause.
3. The fund is required to make quarterly reports to the Court.
4. The supreme court monitors the activities of the fund by having a judge of the supreme court present at its meetings.

The background to this ruling contains other factors that may bear on the criteria for testing integral part status. The administrative functions of the fund are performed by the supreme court administrator, a state employee. Other state employees also work on the fund activities. Ultimate control over the investment and disposition of fund assets rests in the supreme court. The fund may be abolished by the supreme court.

The Service has also taken a position that, in essence, there are two ways in which the organization functions as a component part of the government, that is an integral part of the government. The first is where the organization is dominated by state officials. The second is where the organization is clothed with powers that are governmental in such a manner as to preclude the organization from qualifying as clear counterpart of a section 501(c)(3) organization. Such powers may include police powers, regulatory powers, the power to tax, and, perhaps the power of eminent domain. See Rev. Rul. 74-14 for an example of an organization having regulatory or enforcement powers of such a nature as to preclude it from qualifying as an organization described in section 501(c)(3) of the Code.

The issue of regulatory or enforcement powers is admittedly not quite the same issue in a situation like Rev. Rul 74-14 when compared to the issues of the subject case. In the Rev. Rul. 74-14, the holding is that organization's enforcement powers preclude it from being a clear counterpart of an organization described in section 501(c)(3) of the Code. In the subject case, the question of enforcement or regulatory powers goes more to the question of whether the existence of such powers are but another factor to establish that the public corporation is but an integral part of state or local government.

Rev. Rul. 77-165, 1977-1 C.B. 21, defines the term political subdivision for purposes of section 1.103-1(b) of the Regulations. The ruling discussed the sovereign powers to tax, the power of eminent domain, and the police power. In this ruling, the university did not have the power to tax. It had a limited power to regulate traffic which did not rise to the level of a police power. Its power of eminent domain in specific projects did not represent a substantial right to exercise the power of eminent domain. This ruling is based on criteria that are not quite the same as determining whether an

organization is an integral part of the state. Nonetheless, it demonstrates that certain sovereign powers may be of only limited effect.

X was created by the Legislative Assembly of the Territory of Z under Z Territorial laws. This law is commonly called the "X Charter." The Constitution of the State of Z perpetuated X. X is a "body corporate" under state law. The Charter vests control of X in a 12 member Board of Regents. The members of the Board are elected by the legislature. Vacancies in the Board are temporarily filled by the governor of the State.

The Board is required to report annually to the legislature on "the state and progress of X . . . , the course of study, the number of students and professors, the amount of expenditures and such other information as they may deem proper." The Board is also required under state law to submit to the legislature for "approval or dissent" the salaries of X faculty and other officers.

While X's representative has asserted under state law, primarily court decisions, that X is an agency or institution of the State, the important factors for our determination is how X is to be treated for federal income tax purposes. Thus, other relevant facts bear on this issue.

Both the executive and legislative branches of state government exercise financial controls over X. State law requires X to consult with the chairs of the Senate Finance Committee and the House Ways and Means Committee before purchasing land or purchasing or erecting buildings. State law requires X to make available to the Commissioner of Finance, all books, accounts, documents, and property that the Commissioner wishes to inspect. State law requires the legislative auditor to perform an annual audit of X on the same basis as other state agencies. It is considered part of the state for purposes of membership in the Workers Compensation Reinsurance Association.

State law requires X to pay salaries to nonacademic employees that are comparable to the salaries paid to state employees in the classified civil service. In many other respects the employees of X are treated the same as employees of the state. For purposes of collective bargaining, for purposes of health care, the pension benefits, for purposes of job transferability to the state, and in other respect the non-academic employees are treated much the same as state employees. Many of these same factors do not apply to academic employees, but as described above, the salaries of academic employees are set by the state legislature.

X receives hundreds of millions of dollars each year in financial support from the state. These appropriations represented 28 percent to 32 percent of X's total annual revenues for the period 1991-1998. X receives significantly more per student in terms of support than does the second tier college system of the state, T. Students of the state receive preferential treatment in terms of tuition fees. X's charter endowed it with the mission of providing higher education to state residents.

Another very significant factor is the extent of police and regulatory powers granted to X, as well as the powers of eminent domain. Xs campus police force is the equal of city and county police forces. They have the same training and powers. X

adopts traffic laws and regulations and enforces these regulations by fines, if necessary. The broad regulatory and enforcement powers of X in the form of police powers plus the power of eminent domain constitutes an important factor among a number of factors in deciding this issue. X's powers in this regard far exceed those powers described Rev. Rul. 77-165. It more closely resembles the powers of the organization described in Rev. Rul. 74-14.

What are some of the factors that may work against X in this determination? First, it would appear that the state legislature does not have the power or does not exercise the power to remove members of X's Board of Regents. Secondly, the academic employees of X are not treated in many respects as the employees of the State Z. Nevertheless, the legislature has the very important power of approving the salaries of the academic employees.

In summary, all the factors, when considered together, establish without a doubt that X is an integral part of the state based on the authority cited in the preceding material. Based on the forgoing, the federal tax exemption granted to X under section 501(c)(3) in 1961 was issued in error. As an integral part of the state, X is not entitled to an exemption based on the authority cited above.

C. A Final Consideration- Form 990-T and Section 511(a)(2)(B)

X is subject to the tax on unrelated business income imposed by section 511 and applied to state colleges and universities by section 511(a)(2)(B) of the Code. X filed forms 990-T for the fiscal years 1991-1998, the years at issue in this case. X listed its status as a corporation in filing Form 990-T.

Some have argued that section 6621(a)(1) established a lower credit interest rate for large corporate overpayments where the organization files Form 990-T as a "corporation." We do not read the law in the same way. How one may fill out an income tax form is not authority for establishing entity relationships for federal tax purposes, particularly when a different tax matter than that for which the form is being filed is at issue. Furthermore, federal tax forms are not always designed to capture all the complex permutations of the federal tax code, as is demonstrated by this case.

Both X and the District Director agree that the tax overpayment leading to interest on the refund of taxes under section 6621(a)(1) was entirely related to X's exempt function and had no connection to unrelated business taxable income. Thus, the filing of form 990-T is irrelevant to the issue of interest on tax overpayment under section 6621(a)(1). We do not need to address the issue of whether our answer would be any different if the overpayment was directly related to services within the scope of any unrelated trade or business.

We determined in the preceding discussion that X is not a corporation by virtue of being an integral part of the State of Z. Accordingly, even though it files form 990-T, it is not treated, for federal tax purposes, as a corporation. Thus, it is not subject to section 6621(a)(1) for the lower interest rate for overpayments applied to corporations with overpayments in excess of $10,000.

Conclusion:

1. X is not treated as a corporation for federal tax purposes in that it constitutes and integral part of the State of Z. Accordingly, it is not subject to the lower interest rate on tax overpayments proscribed by section 6621(a)(1) for "corporations."

2. In the case of an entity subject to the unrelated business income tax imposed under section 511(a)(2)(B) of the Code, the corporate overpayment rates do not apply to employment tax refunds when the employment services to which the refund relate are not performed within the scope of any unrelated trade or business.

3. Even though the X filed Form 990-T it is not treated as a corporation for federal tax purposes, and the filing of Form 990-T has no relevancy in this particular case.

4. There is no need to address issue 4.

END